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SUBJECT: Investment Climate Statement, Spain

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¶1. Openness to Foreign Investment

¶A. The socialist (PSOE) government of Spain that assumed office in March 2004 is interested in attracting foreign investment. There have been no significant changes in Spain's regulations for investment and foreign exchange under the new government. Spanish law permits foreign investment of up to 100 percent of equity, and capital movements have been completely liberalized.

¶B. On April 1999, the adoption of royal decree 664/1999 eliminated the need for government authorization of any investments save those in activities "directly related to national defense," such as arms production. The decree abolished previous authorization requirements on investments in other sectors deemed of strategic interest, such as communications and transportation. It also removed all forms of portfolio authorization and established free movement of capital into Spain as well as Spanish capital out of the country. As a result, Spanish law now conforms to the multi-disciplinary EU Directive 88/361, part of which prohibits all restrictions of capital movements between member states as well as between such states and other countries, and which classifies investors according to residence rather than nationality.

¶C. Registration requirements are simple and straightforward, and apply to foreign and domestic investments equally. They aim to verify the purpose of the investment, and do not block any investment.

¶D. Spain's privatization process is slowing down because the government has already sold off most of its leading state owned companies. The process for those remaining is open to all investors. U.S. companies have successfully participated in several purchases. In 2004 the government began the privatization of the railroad system. Effective January 1, 2005, the GOS dissolved the National Rail Network (RENFE) and formed two new companies, ADIF and RENFE-Operadora, both of which remain under state control. In 2005, the GSO initiated the restructuring of the shipbuilding company Izar separating the civil (still called Izar) and military sectors (Navantia). The Spanish privatization holding company (SEPI), has plans to privatize at least six companies and reduce ownership shares gradually in firms where SEPI is a minority shareholder. SEPI has initiated the privatization of IZAR, a shipyard.

¶E. The Spanish government has liberalized the energy, electricity, and telecommunications markets to varying degrees. These efforts have opened Spain's economy to new investment, including by U.S. companies. However, many observers feel these changes have not been broad enough to fully stimulate the economy. For example, in the telecommunications sector, many analysts believe that Telefonica's dominant position undermines competition and innovation. Essentially, it is frequently difficult for new entrants to gain traction in sectors dominated by former state run monopolies such as Telefonica.

¶2. Conversion and Transfer Policies

There are no controls on capital flows. On February 1992, royal decree 1816/1991 provided complete freedom of action in financial transactions between residents and non-residents of Spain. Previous requirements for prior clearance of technology transfer and technical assistance agreements were eliminated. The liberal provisions of this law apply to payments, receipts, and transfers generated by foreign investments in Spain. Capital controls on the transfer of funds outside of the country were abolished in
¶1991. Remittances of profits, debt service, capital gains and royalties from intellectual property can all be affected at market rates using commercial banks.

¶3. Expropriation and Compensation

Spanish legislation sets up a series of safeguards that virtually prohibit the nationalization or expropriation of foreign investment. No expropriation or nationalization of foreign investment has taken place in recent years. There are no outstanding investment disputes between the United States and Spain.

¶4. Dispute Settlement

¶A. Legislation establishes mechanisms to solve disputes if they arise. The judicial system is open and transparent, although slow-moving at times. The Spanish judiciary system is independent from the executive; therefore, the government is obliged to follow court rulings. Judges are in charge of prosecution and criminal investigation, which permits greater independence. The Spanish prosecution system allows for successive appeals to a higher Court of Justice. The European Court of Justice can hear the final appeal. In addition, the Government of Spain abides by rulings of the International Court of Justice at The Hague. Spain is a member of both the International Center for the Settlement of Investment Disputes (ICSID) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

¶B. Spain has a fair and transparent bankruptcy regime. In June 2003, the Spanish Parliament approved a new, modern bankruptcy law that entered into force on September 1, 2004.

¶5. Performance Requirements and Incentives

¶A. Performance requirements are not used to determine the eligibility or level of incentives granted to investors. A range of investment incentives exist in Spain, and they are provided according to the authorities granting incentives and the type and purpose of the incentives.

¶B. Authorities that provide incentives in Spain:

- 1. The European Union:

The European Union provides incentives in the form of subsidies in general development programs such as FEDER and F.S.E. FEOGA- Guarantee. They also provide programs to target specific sectors under the EU Sixth Framework Programme. The Government of Spain manages these incentives locally. However, many benefits from EU-sponsored programs are limited to companies located in the European Community. These incentives will become less financially significant over the coming years as Spain's increasing wealth and EU enlargement will lead to a smaller share for Spain of the EU's general development programs.

- 2. The Central Government:

- a. The central government grants incentives out of its annual budget. Usually, these incentives match EU financing. Central government incentive programs are easily available for direct investment plans. The Ministry of Economy and Ministry of Science and Technology play active roles in granting the incentives.

- b. The Foreign Investment Department, under the Ministry of Economy, counsels new market investors in the application for government incentives. The Ministry of Economy's sector-related departments negotiate directly with the old market investors to inform them of incentives available for new investments.

- 3. The Regional Government:

Regional governments, called Autonomous Communities, also maintain specific programs to attract investment, which are often designed to complement central government incentives.

- 4. Municipalities:

- a. Municipal corporations offer incentives to direct investment by facilitating infrastructure needs, granting licenses, and allowing for the operation and transaction of permits. Usually they are designed to help ease the initial operations of direct investment.

- b. Generally, the regional governments are responsible for the management of each type of investment. This provides a benefit to investors as each autonomous community has a specific interest in attracting investment that enhances its economy.

- c. Types of incentives available:

-- Financial subsidies
-- Exemption from certain taxes
-- Preferential access to official credit
-- Reduction of burdens, with social security discounts to companies
-- Bonuses for acquisition of certain material
-- Customs exemption for certain imported goods
-- Real estate grants, and gratuitous or favorable land grants
-- Guarantees granted in credit operations
-- Loans with low interest, long maturities, and grace periods

-- Guarantee of dividends
-- Professional training and qualification
-- Indirect aid by means of supplying infrastructure facilities (accesses, services, communications, etc.)

- d. Incentives from national, regional or municipal governments and the EU are granted to Spanish and foreign companies alike without discrimination.

- e. Spain is in compliance with WTO TRIMS [Trade-Related Investment Measures] obligations.

¶6. Right to Private Ownership and Establishment

¶A. The Constitution protects private ownership. Spanish law establishes clear rights to private ownership and foreign firms receive the same legal treatment as Spanish companies.

¶B. There is no discrimination against public or private firms with respect to local access to markets, credit, licenses and supplies.

¶7. Protection of Property Rights

¶A. Spanish law protects property rights with enforcement carried out at the administrative and judicial levels. Any decision by the Administration pertaining to property rights can be appealed first at the administrative level and then at the judicial level, which has three levels of court appeals. Property protection is effective in Spain, although the system is slow. The Spanish legal system fully recognizes property rights and facilitates their acquisition and disposition.

¶B. Spanish patent, copyright, and trademark laws all approximate or exceed EU levels of intellectual property protection. Spain is a party to the Paris Convention, Bern Convention, the Madrid Accord on Trademarks, and the Universal Copyright Conventions. Spain has ratified the World Intellectual Property Organization's (WIPO) Copyright Treaty (WCT) and the WIPO Phonograms and Performances Treaty (WPPT), the so-called Internet treaties. However, it has not passed implementing legislation for these treaties because it has not yet implemented the EU Copyright Directive (dealing with much of the same substance of the internet treaties). The GOS unveiled a good anti-piracy initiative in April, 2005. However, it remains to be seen how aggressively this plan will be implemented and what effect it will have. Industry groups are concerned about whether the GSO will allow copyright holders to use technological protection measures for consumer products like DVDs and CDs. With respect to protecting copyrighted content on the Internet, there is a government-industry working group, which is trying to agree on what administrative procedures should exist for curbing Internet downloads of copyrighted material.

¶C. Public and private sector enforcement actions (especially private sector initiatives) using Spain's new patent, copyright and trademark legal framework have greatly increased the number of criminal and civil actions taken against intellectual property pirates. Despite enforcement efforts, piracy remains a significant problem. Sale of pirate music CDs has increased dramatically sparked by growth in organized pirate CD production operations. Industry sources estimate that illegal CDs constitute 30% of the Spanish market with pirated versions of new releases approaching 50%. Pirated software, videogames and DVDs are also sold widely.

a. Patents.
A non-renewable 20-year period for working patents is available if the patent is used within the first three years. Spain permits both product and process patents.

Spain has ratified the 1973 Munich European Patent Convention allowing Spain to be designated in a European patent application. European patents are administered by the European Patent Office, based in Munich (Germany).

b. Copyrights.
The law extends copyright protection to all literary, artistic or scientific creations, including computer software. Spain and the United States are members of the Universal Copyright Convention. For protection, U.S. authors must register with this organization.

c. Trademark.
There are various procedures to register a trademark in Spain. The Spanish Office of Patents and Trademarks oversees protection for national trademarks. Trademarks registered in the Industrial Property Registry receive protection for a 10-year period from the date of application, which may be renewed. Protection is not granted for generic names, geographic names, those that violate Spanish customs or other inappropriate trademarks. Spanish authorities published a new Trademark law in 2001

(Law 17/2001), which came into effect in July 2002.

Applicants must designate the countries where they wish to obtain protection. The World International Property Organization (WIPO, headquartered in Geneva) oversees an international system of registration. However, this system only applies to U.S. firms with an establishment in a country that is a party of the Agreement or the Protocol.

Business may seek a trademark valid throughout the EU. The Office for Harmonization in the Internal Market (OHIM) for the registration of community trademarks in the European Union started its operations in 1996. Its headquarters are located in
Alicante:

Oficina de Harmonizacion del Mercado Interior (Office for Harmonization in the Internal Market)
Avenida Aguilera, 20
03080 Alicante
Tel: (34) 96-513-9100
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¶8. Transparency of Regulatory System

¶A. Spain modernized its commercial laws and regulations following its 1986 entry into the EU. Its local regulatory framework compares favorably with other major European countries. Bureaucratic procedures have been streamlined and much red tape has been eliminated, though permitting and licensing processes can still suffer delays. Efficacy of regulation at the regional level is uneven.

¶B. Quasi-independent regulatory bodies exist in several sectors; however, they are for the most part still finding their role and fighting to assert their independence. Making the transition from state-owned monopolies to promoting full and open competition has been a slow, but steady process.

¶C. The comment process for proposed rule-making changes is not as formal as in the United States. Spain does not have an official comment procedure for government regulations like the U.S. system. Most new laws and regulations are published as drafts before they go into force, but by the time they are published, there are often limited opportunities to change them. Government officials do seek out stakeholder comments before finalizing significant regulations, but the comment system is geared towards collecting input from officially recognized industry sector associations or consumer organizations. The general public will not necessarily be aware of a regulation until it is finalized and published.

¶9. Efficient Capital Markets and Portfolio Investment

¶A. Lower interest rates due to the convergence of monetary policy following the adoption of the euro has led to a significant lowering of interest rates in recent years. Foreign investors do not face discrimination when seeking local financing for projects. There is a large range of credit instruments available through Spanish and international financial institutions. Many large Spanish companies rely on cross-holding arrangements and ownership stakes by banks rather than pure loans. However, these arrangements do not act to restrict foreign ownership. Several of the largest Spanish companies that engage in this practice are also traded publicly in the U.S.

¶B. Corporate scandals in the U.S. and Europe, further integration of European capital markets and efforts to make Spain a more attractive destination for foreign investment have led to several new initiatives to improve the transparency of capital markets and corporate governance. Spanish business organizations and private economic think tanks are pro-active on corporate governance issues. In 2003 and 2004, Spanish business leaders created a progressive code of business practices and ethics. In 2004, Spanish regulatory agencies and lawmakers codified the business codes and required Spain's listed companies to follow a rigorous set of corporate governance and transparency rules. Spain's government views corporate governance rules as a means of ameliorating the effects of concentrated economic power and preventing a major corporate scandal along the lines of Enron or Parmalat.

Due to extensive cross-ownership within a small universe of dominant companies, Spanish corporations have traditionally not had truly independent board members. This situation is slowly changing, with several leading Spanish companies introducing independent members to their boards in an effort to improve transparency.
Hostile takeover rules and the threat of a government "Golden Share" veto have been used to prevent takeovers of companies. While surfacing on occasion in purely Spanish transactions, these defenses are most often used when the acquiring company was partially or fully owned by other

governments, with the Spanish government and securities regulators acting to prevent what they interpret as another government taking over a privatized Spanish company. A European court of Justice decision has ruled such practices illegal. The Spanish Cabinet approved on November 25, 2005 a draft bill scrapping the "Golden Share" rule whereby the government had to approve the sale of more then 10% of the shares in strategically important companies such as Telefonica, Endesa, Iberia and Repsol. The government intends to submit this bill urgently to parliament in order to ensure Spanish law is consistent with the court ruling.

¶C. The domestic Spanish banking system is regarded as healthy, with four banks dominating the market. Spanish regulators have recently focused attention on these banks' exposure to non-performing Latin American assets, and have required full provisions against this exposure. In 2004, new Spanish gross investment abroad was USD 44 billion, showing a 93.02 percent increase from the 2003 annual level. During the first six months of 2005, Spanish authorities recorded USD 2.6 billion in new foreign direct investment, a decrease of 42.09 percent compared with investment in the first semester of 2004. (Note: Statistics on Spanish overseas investments and foreign investments in Spain for the second semester of 2004 will be available in May or June of 2005.) The drop in Spanish overseas investment reflects, in part, fewer attractive opportunities for Spanish companies in Latin America as many of the major privatizations there have already taken place.

¶10. Political Violence

¶A. The Government of Spain is involved in a long-running campaign against Basque Fatherland and Liberty (ETA), a terrorist organization founded in 1959 and dedicated to promoting Basque independence. ETA regularly targets Spanish government officials, members of the military and security forces, journalists, and members of the Popular Party and Socialist Party for assassination. U.S. citizens and U.S. companies have not been ETA targets. In recent years, the Spanish government has secured greater security cooperation from French authorities on the ETA threat. ETA has killed over 40 persons since January 2000 and about 850 persons since its founding. The last lethal ETA attack took place in 2003 when two police officers were murdered. Its main methods are car bombs and assassinations with firearms. ETA operatives extort "revolutionary taxes" from businesspersons and professionals living in the Basque region, sometimes bombing their property to intimidate them into paying extortion demands. ETA supporters also engage in street violence and vandalism against government facilities, economic targets (particularly banks), and the homes and property of persons opposed to ETA's cause. In 2004, the GOS arrested several important high-ranking ETA members and two top ETA leaders were arrested in France. ETA responded by detonating small bombs in Madrid and other cities, but most observers believe the organization has been greatly weakened by the 2004 arrests.

¶B. On March 11, 2004, Islamic terrorists killed 191 people on trains headed for Madrid's central Atocha train station. Several foreign nationals died in the attack, although there were no American citizen casualties. Islamic extremists remain active in Spain and if there are other attacks, U.S. citizens/property could be hurt/damaged, although, so far, U.S. citizens and companies in Spain have not been direct Islamic terrorist targets.

¶11. Corruption

¶A. Giving or accepting a bribe is a criminal act. Under the Spanish civil code, section 1255, corporations and individuals are prohibited from deducting bribes from domestic tax computations.

¶B. Spain has a wide variety of laws, regulations, and penalties dealing with corruption. The legal regime has both civil and criminal sanctions for corruption, bribery, financial malfeasance, etc. The Spanish legal regime is hampered, however, by the fact that only natural persons, as opposed to legal persons, can be held criminally liable for the actions of a company. Furthermore, civil and administrative proceedings cannot begin until there is a finding of criminal liability against a natural person. Although the Ministry of Justice has initiated an amendment process to provide for sanctions of legal persons, it has not yet become law.

¶C. Spain is a signatory of the OECD Convention on Combating Bribery, and Spanish officials attach importance to combating corruption. The government is working to amend domestic law to make the Convention a more useful investigative and prosecutorial tool.

¶D. The General State Prosecutor is authorized to investigate and prosecute corruption cases involving funds in excess of

roughly USD $500,000. The Office of the Anti-Corruption Prosecutor, a subordinate unit of the General State Prosecutor, has 15-20 prosecutors in Madrid, Barcelona, and Valencia who are tasked with investigating and prosecuting domestic and international bribery allegations. There is also the "Audiencia Nacional," a corps of magistrates given broad discretion to investigate and prosecute alleged instances of Spanish businesspeople bribing foreign officials.

¶E. Spain enforces anti-corruption laws on a generally uniform basis. Public officials are probably subjected to more scrutiny than private individuals, but several wealthy and well-connected business executives have been successfully prosecuted for corruption. There is no obvious bias for or against foreign investors. U.S. firms have not identified corruption as an obstacle to investment in Spain.

¶F. Conversations with representatives of the Spanish legal community indicate that the Convention is increasingly being taken into account in the drafting of contracts. Spanish companies, both domestic and multinational, are insisting that clauses protecting them against requests for bribes be inserted into business contracts. Tax evasion, particularly by those who work in cash-based sectors has reportedly been heavy.

11.B Bilateral Investment Agreements

¶A. Spain has concluded bilateral investment agreements with Hungary (1989), Bolivia (1990), the Czech Republic (1990), Russia (1990), Argentina (1991), Chile (1991), Tunisia (1991), China (1992), Egypt (1992), Poland (1992), Uruguay (1992), Paraguay (1993), Philippines (1993), Algeria (1994), Honduras (1994), Pakistan (1994), Kazakhstan (1994), Peru (1994), Cuba (1994), Nicaragua (1994), Lithuania (1994), Bulgaria (1995), The Dominican Republic (1995), El Salvador (1995), Gabon (1995), Latvia (1995), Malaysia (1995), Romania (1995), Indonesia (1995), Venezuela (1995), Mexico (1995), Turkey (1995), Lebanon (1996), Ecuador (1996), Costa Rica (1997), Croatia (1997), Estonia (1997), India (1997), Panama (1997), Morocco (1997), Slovenia (1998), South Africa (1998), Ukraine (1998), the Kingdom of Jordan (1999), Trinidad and Tobago (1999), the Bolivian Republic (2001), Jamaica (2002), the Islamic Republic of Iran (2002), the Federal Republic of Yugoslavia (2002), Bosnia and Herzegovina (2002), Namibia (2003), Albania (2003), and Uzbekistan (2003), Syria (2003)

¶B. Spain and the United States have a Friendship, Navigation and Commerce (FCN) Treaty and a Bilateral Taxation Treaty (1990). Spanish officials have indicated that they would like to keep the FCN, despite indications in 2004 that the EU Commission wanted Member States to terminate bilateral FCN agreements.

11.C OPIC and Other Investment Insurance Programs

¶A. As Spain is a member of the European Union, OPIC insurance is not applicable. Various EU directives, as adopted into Spanish law, adequately protect the rights of foreign investors. Spain is a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA).

11.D Labor

¶A. Employment estimates for 2005 show that there are about 20.9 million Spaniards in the work force. This figure is expected to climb to 21.1 million for 2006. Meanwhile, unemployment continued its decrease from the 1994 high of 24.2 percent down to 8.42 percent in third quarter of 2005. Unemployment for women continues to be substantially higher than the male average, at 11.19 percent compared to 6.49 percent. Spain faces a shortage of high-tech workers for its IT sector, and of unskilled workers for its fishing and agricultural industries.
¶B. Labor market reforms in 1994 and 1997 eased Spain's well-known labor market rigidities but did not fundamentally change the difficult labor situation. The result is that one third of all employed Spaniards are classified as temporary hires. Spain's new socialist government promised to reform labor laws as part of its electoral program. The government would like to move people from short-term contracts to regular employment status, but so far inducements to employers to make this happen have not been implemented. The government recognizes that labor market reform is essential to increasing productivity, which Spain needs to do as it faces competition from lower-wage EU accession countries. Collective bargaining reform should be part of this effort, but so far this has not happened either. In early 2005, for instance, the Spanish government approved indexing the minimum wage to inflation. The unions supported this position and employers accepted it, albeit unenthusiastically with some employer representatives questioning the decision.

¶C. Collective bargaining is widespread in both the private and public sectors. Sixty percent of the working population is covered by collective bargaining agreements although only a minority (generally estimated to be about 10 percent) are actually union members. Under the Spanish system, workers elect delegates to represent them before management every four years. If a certain proportion of those delegates is union-affiliated, those unions form part of the workers' committees. Large employers generally have individual collective agreements. In industries characterized by smaller companies, collective agreements are often industry-wide or regional.

¶D. The constitution guarantees the right to strike and it has been interpreted to include the right to call general strikes called to protest government policy.

11.E Foreign-Trade Zones/Free Ports

¶A. Both on the mainland and islands there are numerous free trade zones (in most Spanish airports and seaports) where manufacturing, processing, sorting, packaging, exhibiting, sampling and other commercial operations may be undertaken free of any Spanish duties or taxes. The largest free trade zones are in Barcelona, Cadiz and Vigo. Others vary in size from a simple warehouse to several square kilometers. Spanish customs legislation allows for companies to have their own free trade areas. Duties and taxes are payable only on those items imported for use in Spain. These companies have to abide by Spanish labor laws.

11.F Foreign Direct Investment Statistics

(In USD Millions)	2002*	2003*	2004*
Total new foreign direct investment in Spain	10,811	11,214	13,844
U.S. direct investment in Spain	692	1,663.7	2,358.6
U.S. share of total direct invest (%)	6.4	14.84	17.04
Total new Spanish investment abroad	23,841	20,747	44,045
Spanish investment in U.S.	1,548.6	1,820.9	742.7
U.S. share of total Spanish investment (%)	6.49	8.78	1.69

New Foreign Direct Investment in Spain (2003*): by country of origin

U.S.	17.04 percent
The Netherlands	7.67 percent
Germany	3.27 percent
United Kingdom	18.09 percent
France	11.17 percent
Luxembourg	0.73 percent
Canada	1.30 percent
Italy	2.33 percent
Sweden	0.90 percent
Other EU countries	10.45 percent

New Foreign Direct Investment in Spain (2004*): by industry sector destination

Food and Beverage	3.88 percent
Electric Energy Production	5.61 percent
Manufacturing	6.55 percent
Commerce	19.8 percent
Transportation & Communication	4.09 percent
Banking and Insurance	14.49 percent
Real estate and services	11.62 percent
Company Management and Share Holding	18.93 percent
Others	11.33 percent

Source: Directorate General of Trade and Investment, Ministry of Industry, Tourism and Trade. Note (*): data are not comparable with previous investment figures for previous years. It is a new concept that corresponds to Registered Gross Investment discounted: a) acquisitions of shares and stakes in Spanish companies from other non-residents; and b) multiple accounting for the same investment as a result of business group restructuring in Spain.

11.G Major Foreign Investors

Foreign investment has played a significant role in modernizing the Spanish economy over the past 35 years. Attracted by Spain's large domestic market, export possibilities and growth potential, foreign companies in large numbers have set up operations. Spain's automotive

industry is almost entirely foreign-owned.

Multinationals control half of the food production companies, a third of chemical firms and two-thirds of the cement sector. Several foreign banks have acquired networks from Spanish banks, and foreign firms control close to one third of the insurance market. In 2004, Spain recorded USD 13.8 billion in new foreign direct investment, a light increase of 0.25 percent compared with investment in 2003. In 2004, the European Union countries were the largest investors accounting for 55.9 percent. The non-European OECD countries invested USD 2.6 billion, accounting for 18.9 percent. By countries, the largest investors were United Kingdom, the United States, Mexico, France, Portugal, the Netherlands, Germany, Italy and Switzerland.

Note: FDI numbers provided in this section do not include portfolio investment

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